

CHAPTER 144. DISPUTE RESOLUTION—ARBITRATION

§144.1. Authority and Duties of Arbitrators.

(a) The arbitrator is authorized but not limited to:

- (1) set the time and location of the arbitration proceeding within the provisions of the Texas Workers' Compensation Act (the Act), Articles 8308-6.03 and Article 8308-6.24;
- (2) compel the parties to exchange all pertinent medical reports and other documentary evidence, and proposals for resolving the issues in dispute;
- (3) conduct, at his/her discretion, preliminary conferences to identify issues to resolve questions concerning evidence and witnesses, and to otherwise expedite the arbitration proceeding;
- (4) exclude individuals other than the parties and the employer from the arbitration proceeding;
- (5) administer oaths;
- (6) take official notice of the law of Texas and other jurisdictions, Texas city and county ordinances, the content of the Texas Register, the rules of state agencies, facts that are judicially cognizable, and generally recognized facts within the commission's specialized knowledge;
- (7) determine the relevancy and materiality of the evidence offered, without a requirement to conform to legal rules of evidence; and
- (8) accept stipulations by the parties on uncontested issues.

(b) The arbitrator has a duty to:

- (1) disclose to all parties and the commission any potential conflicts with his/her position as arbitrator and other personal or business interests. Further, to disclose any circumstances that may affect impartiality, including past or present relationships, either personal or business, to any party;
- (2) protect the interests of all parties, including the advisement of the claimant's rights if not represented;
- (3) maintain the confidentiality of the arbitration proceeding;
- (4) encourage brevity, consistent with completeness, at all stages of the arbitration proceeding;
- (5) ensure that all relevant evidence has been disclosed to him/her and to all parties;
- (6) render an award based upon the evidence and consistent with the terms of the Act, and the rules and policies of the commission;
- (7) ensure an electronic recording is made of the proceedings;
- (8) arrange for the provision of interpreter services if necessary; and
- (9) comply with standards of conduct and ethical principles of his/her professional group, those set forth in the Act, commission rules, and the codes of professional responsibility promulgated by the arbitrator's professional association.

The provisions of this §144.1 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.2. Ex Parte Communications.

- (a) On any substantive matter regarding facts, issues, law, or rules, an arbitrator may not communicate with any party outside the arbitration unless the communication is:
 - (1) in writing; and
 - (2) copy is delivered to all parties to the arbitration.
- (b) Notwithstanding subsection (a) of this section, any party may communicate with the arbitrator concerning any procedural matter.
- (c) Failure to comply with this rule is an administrative violation, with a sanction to be established by the commission, pursuant to the Texas Workers' Compensation Act, Article 8308-10.21.

The provisions of this §144.2 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.3. Delivery of Copies of Documents.

A party who sends a document relating to the arbitration proceeding to the commission or the arbitrator shall also deliver copies of the document to all other parties, or their representatives or attorneys. Delivery shall be accomplished by presenting in person, mailing by certified mail, return receipt requested, or transmitting by telephonic transmission. The document sent to the commission or the arbitrator shall contain a statement certifying delivery using the following format: "I hereby certify that I have on the ____ day of _____, _____, delivered a copy of the attached document to _____ by _____ (state manner of delivery)."

The provisions of this §144.3 adopted to be effective December 31, 1991, 16 TexReg 7358; amended to be effective March 14, 2001, 26 TexReg 2033.

§144.4. Election To Engage in Arbitration.

- (a) Following a benefit review conference where one or more disputed benefit issue(s) remain unresolved, the parties may mutually agree to engage in arbitration on those issues.
- (b) Parties agreeing to engage in arbitration must complete and sign a commission-prescribed form, and file it with the Arbitration Section of the Division of Hearings not later than the 20th day after the last day of the benefit review conference.
- (c) A party may submit a response to the disputes identified as unresolved in the benefit review officer's report. The response shall:
 - (1) be in writing;
 - (2) describe and explain the party's position on the unresolved dispute or disputes;
 - (3) be sent to the commission no later than 20 days after receiving the benefit review officer's report; and
 - (4) be delivered to all other parties, as provided by §144.3 of this title (relating to Delivery of Copies of Documents).
- (d) Except as provided by §144.10 of this title (relating to Stipulations, Agreements, and Settlements), the decision to proceed with arbitration in place of a contested case hearing, once filed with the commission, is

binding and irrevocable for the resolution of all disputes arising out of the claims that are under the jurisdiction of the commission.

The provisions of this §144.4 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.5. Statement of Disputes.

- (a) Statement of disputes. The statement of disputes is a written description of the benefit dispute or disputes to be considered by the arbitrator. A dispute not expressly included in the statement of disputes will not be considered by the arbitrator.
- (b) Statement of disputes after a benefit review conference. The statement of disputes for an arbitration proceeding conducted after a benefit review conference includes:
 - (1) the benefit review officer's report, identifying the disputes remaining unresolved at the close of the benefit review conference;
 - (2) the parties' responses to the benefit review officer's report, if any; and
 - (3) additional disputes by unanimous consent, as provided by subsection (c) of this section.
- (c) Additional disputes by unanimous consent. Parties may, by unanimous consent, submit for inclusion in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. Additional disputes submitted by consent shall:
 - (1) be made in writing;
 - (2) identify the dispute and explain each party's position on it;
 - (3) be signed by all parties;
 - (4) be sent to the commission no later than 10 days before the arbitration proceeding; and
 - (5) explain why the issue was not raised earlier.

The provisions of this §144.5 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.6. Assignment of Arbitrator.

- (a) The director of the Division of Hearings will maintain, in random name order, lists of qualified arbitrators established by the commission. Not later than the 30th day after an election to engage in arbitration is filed, an arbitrator will be assigned from the appropriate list. Each party will be notified immediately either personally or by certified mail, return receipt requested.
- (b) Assignment from the list of arbitrators shall be from the top of the list. When the list has been exhausted by assignment of each arbitrator to a case, the list will be randomly reordered.
- (c) Each party to the arbitration proceeding is entitled to one rejection of an assigned arbitrator and must exercise such rejection not later than the third day following receipt of notification of an arbitrator's assignment. Once a rejection is exercised, the next arbitrator from the top of the list will be assigned.
- (d) A rejection exercised by a party must be:
 - (1) in writing;

- (2) signed by the party or authorized representative;
- (3) personally delivered or sent by certified mail, return receipt requested, or telephonic transmission, not later than the third day following receipt of notice of an arbitrator's assignment, to the commission with a copy to all parties.

The provisions of this §144.6 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.7. Setting the Arbitration Proceeding.

- (a) Following any rejections as set forth in §144.6 of this title (relating to Assignment of Arbitrator), the arbitrator shall schedule arbitration to be held not later than the 30th day following his/her assignment.
- (b) The arbitrator shall notify, in writing, all parties and the employer of the time and place scheduled for the arbitration. The notification shall be by personal delivery or certified mail, return receipt requested.
- (c) Unless the assigned arbitrator determines that good cause exists for the selection of a different location, arbitration proceedings may not be conducted at a site more than 75 miles from the claimant's residence at the time of injury.

The provisions of this §144.7 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.8. Expediting Procedures.

- (a) In addition to the use of affidavits, medical reports, stipulations, and agreements, the arbitrator may allow, to the maximum extent possible and with due consideration to completeness and fairness, expediting procedures, including, but not limited to, the use of:
 - (1) unsworn witness statements; and
 - (2) summaries of evidence.
- (b) The arbitrator may allow use of expediting procedures unless objected to by a party, and the arbitrator determines that there is good cause for sustaining the objection.

The provisions of this §144.8 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.9. Exchange of Evidence and Proposed Resolution.

- (a) Not later than the seventh day preceding the arbitration proceeding, each party is required to exchange with the other party, and file with the arbitrator:
 - (1) all pertinent medical reports and other documentary evidence in the party's possession not previously exchanged or filed; and
 - (2) written proposals for resolving the issues in dispute.
- (b) A party failing to comply with this requirement without good cause, as determined by the arbitrator, commits a Class D administrative violation, with a penalty not to exceed \$500.

The provisions of this §144.9 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.10. Stipulations, Agreements, and Settlements.

- (a) At any time before or during the arbitration proceeding, parties may:
 - (1) enter into stipulations, defined as a voluntary accord between parties to an arbitration regarding any matter relating to the arbitration that does not constitute an agreement, as defined by the Texas Workers' Compensation Act (the Act), Article 8308-1.02(3), or a settlement, as defined by the Act, Article 8308-1.02(43);
 - (2) resolve one or more benefit disputes by agreement; or
 - (3) resolve all benefit disputes by settlement.
- (b) Stipulations shall be made as follows:
 - (1) in writing; and
 - (2) signed by all parties to the stipulation, or their representatives.
- (c) Agreements and settlements shall be made as provided by Chapter 147 of this title (relating to Dispute Resolution--Agreements, Settlements, Commutation).

The provisions of this §144.10 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.11. Continuance.

- (a) Any request for a continuance by a party must be directed to the Arbitration Section of the Division of Hearings and served personally by certified mail, return receipt requested, or by telephonic transmission, on all other parties.
- (b) A continuance may be granted for up to 30 days only upon a determination of good cause. Notwithstanding the existence of good cause, not more than one continuance will be granted to each party.

The provisions of this §144.11 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.12. Failure To Attend Arbitration.

A party who fails to attend any session of the arbitration proceeding after electing arbitration commits a Class D administrative violation, with a penalty not to exceed \$500, unless the arbitrator determines that the party had good cause not to attend.

The provisions of this §144.12 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.13. Rights of Parties.

- (a) Each party to the arbitration proceeding is entitled to be present, to have a full, fair, and impartial hearing of all relevant evidence, and to present the party's respective position on the issue(s) in dispute.
- (b) Parties to the arbitration are entitled to be represented by counsel or other representative authorized under and in accordance with the Texas Workers' Compensation Act and commission rules.
- (c) Each party, and the arbitrator, is permitted to call witnesses who have relevant information to testify (under oath if required by the arbitrator or requested by a party) and to ask questions of any witnesses called.

- (d) A party desiring to have a record made of the arbitration proceeding by stenographic means may do so and is responsible for arranging for and the expense of making a record by such means. A copy of the stenographic report shall be provided to the commission at no charge and may be made available to the other parties.

The provisions of this §144.13 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.14. Usual Order of Proceedings.

- (a) The arbitration proceeding will begin with preliminary matters including the introduction of copies of the election of arbitration and the assignment of the arbitrator, the introduction of all parties and representatives, statements for the record of the date, time, and place of the proceedings, and a concise statement of the disputed issue(s).
- (b) An electronic recording of the proceeding will be made by the arbitrator.
- (c) The arbitrator will allow and may assist each party to make a brief opening statement setting forth its position on unresolved issues and the issues with respect to which it is prepared to stipulate.
- (d) The claimant shall be the first party to present all relevant evidence desired in support of the claim including the testimony of witnesses.
- (e) Following the claimant's presentation of evidence, the other party to the proceeding may present evidence desired to be considered by the arbitrator, including the calling of witnesses.
- (f) After each party has presented the evidence desired, the arbitrator may call for additional evidence that he/she considers necessary for a proper understanding and determination of the issues.
- (g) Each party may present closing statements as desired, but the record may not remain open for written briefs unless requested by the arbitrator.

The provisions of this §144.14 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.15. Award of the Arbitrator.

- (a) Not later than the seventh day after the last day of arbitration, the arbitrator shall enter the final award which must:
 - (1) be in writing;
 - (2) be signed and dated by the arbitrator; and
 - (3) include a statement of his/her decision on the contested issues and the parties' stipulations on uncontested issues;
 - (4) be sent to the parties by certified mail, return receipt requested, or personal delivery; and
 - (5) be filed as a part of the permanent claim file.
- (b) The award entered is final and binding on all parties. Except as provided by the Texas Workers' Compensation Act, Article 8308-6.28, there is no right of appeal.
- (c) The arbitrator's award is a final order of the commission.

(d) For the purposes of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

The provisions of this §144.15 adopted to be effective December 31, 1991, 16 TexReg 7358.

§144.16. Requesting a Copy of the Record.

A party or the employer may request a copy of the electronic recording of the arbitration proceeding from the commission. The requester shall pay the cost of the duplication, as established by the commission.

The provisions of this §144.16 adopted to be effective December 31, 1991, 16 TexReg 7358.

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